

Response to Official Action  
Application No. 10/047,134  
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**Amendments to the Drawings:**

No amendments are made to the Drawings herein.

### **REMARKS**

Claims 1, 13 and 16, all independent claims, stand rejected under 35 U.S.C. §103(a) as being unpatentable over Klein (U.S. Patent No. 6,709,330) in view of O'Shaughnessy (U.S. Patent No. 6,484,151) or over Klein in view of Applicant's admissions. Applicant respectfully asks the Examiner to reconsider these rejections in view of the following Remarks.

The present invention, as claimed, is directed to a system and method for simulating the trading of financial assets, which system and method simulates trading by presenting to the user a series of time intervals and corresponding prices and processing trades indicated by the users based on this series of time intervals and corresponding prices. All claims have been previously amended to highlight the fact that, in the inventive system and method of the present invention, at least some of the time intervals and corresponding prices are based on historical data.

Applicant respectfully submits that at least the above-highlighted elements, required by all claims of the present application, as amended, are not disclosed, taught or suggested by the prior art cited by the Examiner, or by any other prior art of which Applicant is aware.

Klein is directed to an options simulation engine for an options trading game. The simulation engine comprises a game engine for keeping track of game time and game settings, an options market simulator for simulating a real-world options trading environment, and a portfolio manager engine for keeping track of a player's portfolio. The options market simulator comprises a basic stock price generator for moving stock prices, a news/rumor generator for moving stock prices, and an options pricing generator for pricing options. The portfolio manager

comprises an available cash/minimum balance mechanism for determining how much a player is charged for buying and/or selling options and stocks, and for maintaining a player's positions, a risk analysis mechanism for determining the amount of money a player can lose for any given stock or option, a margin requirements mechanism for keeping track of the minimum equity required in a player's account to support the player's total investment position, a profit and loss mechanism for determining a player's profit and loss throughout the game and on a weekly basis, and a trading rules/limitations mechanism that prevents a player from breaking a trading rule or exceeding a limitation during game play.

It should be noted, however, that nowhere does Klein disclose, teach or suggest that at least some of the time intervals and corresponding prices are based on historical data, as is required by all claims, as amended. This is expressly recognized by the Examiner at page 3, lines 13-15 and at page 7, lines 13-15 of the Final Office Action mailed January 6, 2006. Instead, the Examiner relies upon O'Shaughnessy and Applicant's admissions as disclosing this missing element, and asserts that it would have been obvious to one having ordinary skill in the art to have combined these purported teachings of O'Shaughnessy and Applicant's admissions with Klein to arrive at the claimed invention. Applicant respectfully disagrees for at least two reasons.

First, Applicant respectfully submits that neither O'Shaughnessy nor Applicant's admissions disclose the element missing in Klein (i.e., the use of time intervals and corresponding prices which are based on historical data in a system for simulating trading of financial assets).

O'Shaughnessy is directed to a portfolio management system which assists an investor in selecting and purchasing stocks in accordance with various portfolio

strategies. O'Shaughnessy does not disclose, teach or suggest in any way a simulated trading environment, never mind a simulated trading environment in which simulated trades are based upon time intervals and corresponding prices based on historical data, as is required by all claims, as amended. While O'Shaughnessy does disclose that historical information is displayed to the investor, the historical information is used only to evaluate whether particular trading strategies should be pursued and/or whether particular stocks should be purchased. Historical information is not used in any way to simulate trading over a historical time period in the context of a simulated trading environment, as is required by all claims, as amended, of the present application.

The system discussed in the Background section of the present application (i.e., Applicant's admissions cited by the Examiner), is merely a system which allows a trader to evaluate the performance of a particular trading strategy. For example, a user may specify a particular trading technique, such as, for example, selling a technology stock when the market price is either 5 dollars above or below the buying price. Once the user's parameters have been specified, the system may chart the performance of the technology stock as compared with actual historical performance of that stock in order to demonstrate how the specified particular trading technique would have performed. However, although historical data is employed by this system, the historical data is used only to evaluate whether particular trading strategies should be pursued. Historical information is not used in any way to simulate trading over a historical time period in the context of a simulated trading environment, as is required by all claims, as amended, of the present application.

Thus, none of Klein, O'Shaughnessy or Applicant's admissions disclose, teach or suggest in any way the use of time intervals and corresponding prices

which are based on historical data in a system for simulating trading of financial assets. Applicant acknowledges that the use of historical data for numerous purposes has been known for centuries. Historical data is used in determining whether to loan persons money, in determining sentences in criminal cases, in deciding whether or not to date particular persons, in evaluating whether particular trading strategies should be pursued and/or whether particular stocks should be purchased (as is the case with O'Shaughnessy and Applicant's admissions), etc. However, Applicant respectfully submits that, to the best of its knowledge, historical information has never been used in order to simulate trading over a historical time period in the context of a simulated trading environment, as is required by all claims, as amended, of the present application.

Moreover, even if it was discovered that historical information has, in fact, been used in order to simulate trading over a historical time period in the context of a simulated trading environment, Applicant respectfully submits that it would not have been obvious to modify Klein to incorporate this element.

It is well settled that the mere fact that references can be combined or modified does not render the resultant combination or modification obvious unless the prior art also suggests the desirability of the combination or modification. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). It is also well settled that if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

In the present case, Applicant respectfully submits that it would not have been obvious to have modified Klein to employ time intervals and corresponding

prices which are based on historical data. First of all, a large portion of the disclosure of Klein is devoted to explaining, in detail, the algorithms and methods used to create and generate the fictitious data upon which the simulated trading is based. If historical data were substituted for the fictitious data contemplated by Klein, a large portion of the teachings of Klein would be superfluous. One skilled in the art reading Klein would understand that the generation of fictitious data is one of the central elements, if not the most central element, of Klein, and would not have modified Klein to remove this element.

Moreover, Klein is concerned with providing a game. Although Klein does discuss that one of the purposes of the game is to educate the player, a major purpose of Klein, as with any game, is to provide a fun and exciting experience to the player. The algorithms disclosed in Klein for generating the fictitious data upon which the simulated trading is based, are specifically designed to so provide a such fun and exciting experience in order to keep game players entertained by presenting the player with unexpected and interesting situations. Such would not necessarily be the case if the time intervals and corresponding prices were based on historical data, which oftentimes might lead to ordinary and mundane situations, and therefore ordinary and mundane gameplay.

This fact is not a problem, however, in connection with the present invention, which rather than being directed to a game, is directed to a system for providing a test environment for trading assets. In fact, one of the main stated objects of the invention is to provide “a testing environment that provides a realistic relation to actual financial markets.” (see paragraph [0006] of the present application). Thus, the present invention is concerned with allowing a user to evaluate his/her performance in a real-world environment. In fact, the system would allow the user to determine how his/her performance would have been at a

particular time in history. For example, suppose the time intervals and corresponding prices were based on historical data for XYZ stock during the time period from January 1, 2000 to December 31, 2000. At the end of the simulation, the system of the present invention could inform the player that he/she would have had a specific gain or loss had he/she been trading XYZ stock during the year 2000. This information, based on real world historical data, would be much more useful to an investor attempting to gauge his/her trading experience level than would ensuring that the user has an exciting time playing a game based upon fictitious data.

Thus, not only is there no motivation provided in any of the cited prior art to modify Klein as suggested by the Examiner, but Klein itself also teaches away from such a modification, since the modification suggested by the Examiner would render Klein unsatisfactory for its intended purpose (i.e., providing a fun and exciting experience in order to keep game players entertained by presenting the player with unexpected and interesting situations) in many instances.

For the foregoing reasons, Applicant respectfully submits that all pending claims, namely Claims 1-18, are patentable over the references of record, and earnestly solicits allowance of the same.

Respectfully submitted,



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